

E-309, 124/SA-89-778REQUIRING ADDITIONAL FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the Application of the City of Shakopee to Extend its Assigned Service Area into the Area Presently Served by the Minnesota Valley Electric Cooperative

ISSUE DATE: December 6, 1989

DOCKET NO. E-309, 124/SA-89-778

ORDER REQUIRING ADDITIONAL FILINGS

PROCEDURAL HISTORY

On September 8, 1989 the City of Shakopee filed a petition under Minn. Stat. § 216B.44 (1988), stating its intention to extend its assigned service area to include all territory within the city limits currently assigned to Minnesota Valley Electric Cooperative (Minnesota Valley or the co-op). The petition sought the following relief in the alternative:

1. an Order finding that the co-op was serving retail customers within the city limits without a franchise, contrary to City ordinance, and must remove its facilities without compensation unless and until it acquired a franchise;
2. an Order authorizing the City to serve all new retail customers within that portion of the co-op's assigned service area which lies within the city limits;
3. an Order prohibiting the co-op from extending service to any new retail customers within that portion of the co-op's assigned service area which lies within the city limits, except upon 30-days' notice to the City and the Commission and after notice, hearing, and a Commission determination that such extension is in the public interest;
4. an Order determining appropriate terms for the City's acquisition of co-op facilities in that portion of the co-op's assigned service area which lies within the city limits;
5. an Order determining which of the forms of relief requested in paragraphs 1 through 4 require contested case proceedings under the Administrative Procedure Act, Minn. Stat. §§ 14.01 et seq. (1988);

6. an Order referring those matters determined to require contested case proceedings to the Office of Administrative Hearings under Minn. Stat. § 14.58 (1988).

The co-op filed a response alleging that the City was estopped from enforcing the franchise requirement because it had rebuffed the co-op's earlier application for a franchise. The co-op reported the City had stated it intended to acquire the co-op's service territory at a later date and would not enforce the franchise requirement in the interim.

The Department of Public Service (the Department) filed comments stating the City's obligation to compensate the co-op for the intended acquisition of its service area was unaffected by the franchise requirement. The Department recommended referring the issue of the appropriate level of compensation to the Office of Administrative Hearings. Finally, the Department asserted the City had failed to establish any genuine issue of material fact which required a hearing on interim service rights. Nevertheless, the Department stated the Commission might choose to require affidavits on material issues from the parties, to remove any doubt in the matter.

FINDINGS AND CONCLUSIONS

The Franchise Issue

The Commission rejects the City's claim that the co-op's lack of a franchise entitles the City to acquire the co-op's service area without paying the compensation required under Minn. Stat. §§ 216B.44-.45 (1988). Whatever merit there may be in the City's claim that its franchise ordinance has been violated, it is clear that forfeiture of compensation under Minn. Stat. §§ 216B.44-.45 (1988) is not one of the City's remedies.

Furthermore, the service area statutes make it clear that municipal franchise requirements cannot alter service area boundaries set by the Commission. Franchise requirements can relate only to matters such as public safety, rights of way, and revenue collection. Authority over rate and service regulation, service area assignments, and securities and indebtedness is vested exclusively in the Commission. Minn. Stat. § 216B.36 (1988), emphasis added.

It is equally clear that municipalities cannot use their franchise authority to frustrate the purposes of the assigned service area statute or to change boundaries set by the Commission. In the Matter of the Complaint by Kandiyohi Cooperative Electric Power Association Against Willmar Municipal Utilities Commission for Extending Electric Facilities in and Adjacent to Westwind Estates, Docket No. E-118, 329/SA-89-502, ORDER REQUIRING CESSATION OF PROVISION OF ELECTRIC SERVICE (August 9, 1989). The Commission concludes that the City's franchise requirement cannot and does not affect the co-op's right to serve retail customers within its assigned service area or its right to compensation from the City for the City's acquisition of the area.

The Compensation Issue

The City of Shakopee has a statutory right to acquire the portion of the co-op's service area which lies within its city limits, upon payment of appropriate compensation to the co-op. In determining compensation the Commission is to consider the original cost of co-op facilities serving the area, depreciation, loss of revenue attributable to serving the area, expenses resulting from integration of facilities, and other appropriate factors. Until compensation is paid, the co-op's facilities are to remain in place, and the co-op is to continue providing service. Minn. Stat. § 216B.44 (1988).

Determining compensation requires considering highly specific facts and the sort of detailed evidentiary record best developed through contested case proceedings. The Commission will by separate Order refer the compensation issue to the Office of Administrative Hearings for contested case proceedings.

The Interim Service Rights Issue

The statute provides that the utility the City seeks to displace shall continue providing service to new customers in the area unless the Commission finds, after notice and hearing, that such service extensions would not be in the public interest. A crucial factor in determining the public interest is whether allowing the co-op to serve new customers would result in unnecessary duplication of facilities. Minn. Stat. § 216B.44 (1988).

The City has alleged that allowing the co-op to serve new customers could result in unnecessary duplication of facilities. The City has no knowledge of any future extensions likely to result in such duplication, however. The co-op states its current facilities have adequate capacity to serve all likely future customers in the area.

The Commission believes it should allow the co-op to continue serving new customers in the area unless and until the City demonstrates that this would result in uneconomical and unnecessary duplication of facilities. The facts alleged to date have been conclusory and would not support a finding that continued service by the co-op would contravene the public interest. The Commission is disinclined to rule against the City without examining any facts which might demonstrate that duplication would occur, however. The Commission will therefore require both the City and the co-op to file affidavits setting forth the facts relevant to this issue, to ensure adequate consideration on the merits.

The parties will be required to submit affidavits containing the facts material to the interim service issue and will have ten days to file comments identifying any material facts in dispute which require contested case proceedings. The affidavits shall contain at least the following information:

1. A list and description of the facilities each utility currently has in place to serve the area;
2. A list and description of all property developments currently planned or in progress in the area, including a description of each development's electric service needs;
3. A description of the capacity of all facilities listed and described in response to

question 1, and an analysis of their ability to serve all developments described in response to question 2;

4. A description of the nature and cost of any new distribution facilities necessary to serve new customers in the area;
5. A detailed description of the impact on the orderly development, improvement, and extension of the City's electric system of any Commission decision awarding interim service rights to the co-op;
6. An itemization of the costs the City expects to incur by virtue of any Commission Order allowing the co-op to extend service to new customers while compensation is being determined;

7. A description of the degree to which the co-op's and the City's electric systems are compatible, a description of the measures the City will have to take to integrate its facilities with those it will acquire from the co-op, and an itemization of all associated expenses.

ORDER

1. Within 20 days of the date of this Order the City and the co-op shall file the affidavits described above.
2. Within 10 days of the expiration of the 20-day period for filing affidavits, the parties shall file comments identifying any material facts believed to be in dispute and requiring contested case proceedings.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson
Acting Executive Secretary

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